HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1043 of 2002

Date of Decision: 28 / 29.3.2007

Parmod Kumar ……. Petitioner

Versus

B.S. N. L. and Others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For the petitioner	:	Mr. Bhuvnesh Sharma, Advocate.
For the respondents	:	Mr. Ashwani Pathak, Central Govt. Counsel.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open court in presence of the learned counsel for the parties.

The grievance of the petitioner herein is that even though he has been promoted to the post of Telecom Mechanic w.e.f. 6th May, 1996, however, his promotion ought to have been w.e.f. 1st of October, 1993 and in any case also he was entitled for pecuniary / financial benefits of the post of Telecom Mechanic w.e.f. 6th May, 1996.

Facts leading to the filing of the present writ petition are as under:-

On 10th of February, 1987, petitioner was appointed as a regular ***'Mazdoor'*** with the respondents in the office of SDO (Telecom),

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Whether reporters of Local Papers may be allowed to see the judgment?

Shimla –1. On 1st of June, 1990, he was promoted as Lineman and has been functioning as such till he was promoted as Telecom Mechanic. Vide circular dated 16th of October, 1990, respondents introduced a new technical cadre in Groups 'C' & 'D' of the department of Telecom. According to the new re-structured cadre, the cadre of Phone Mechanic was to have a minimum educational qualification of 10th standard both for open recruitment as well as for departmental candidates. This post of Phone Mechanic was re-designated as Telecom Mechanic. The criteria laid down for filling up of the said post is reproduced as under:-

> "1) **PHONE MECHANIC**: 50% from Lineman / Wireman who possess 10th standard qualifications by seniority-cum-fitness followed by training and post training tests. Balance 50% by a competitive examination from Lineman / Wireman who are non matriculates and also from regular mazdoors and casual mazdoors who possess 10th standard qualifications."

In order to fill up the post as per the newly re-structured cadre, a list containing names of such persons who fulfil the eligibility criteria for promotion to the post of Telecom Mechanic was circulated. Petitioner's name is admittedly mentioned in the same.

Petitioner was asked to undergo training of twelve weeks induction course of Phone Mechanic (Switching), which was to commence at RTTC, Rajpura w.e.f. 12th July, 1993. While the petitioner was undergoing training, a case under Sections 120B, 409, 465, 468, 471, 477A of IPC read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act for allegedly misappropriating stores worth Rs.14,20,189/- in the store of Telecom Department at Shimla, during the

year 1993-94, was registered. Petitioner was relieved on 24th February, 1993 and was asked to report to CBI office at Chandigarh. Even though there is nothing on record but I am told by the learned counsel for the petitioner that the petitioner was arrested on 27th September, 1993 itself. Admittedly, petitioner could not complete his training as during the course of training itself, he was under custody of the respondents. Petitioner was also placed under suspension by the respondents w.e.f. 1st November, 1993 till 4th December, 1995. Such of those persons who had successfully completed their training, juniors or seniors to the petitioner were considered for promotion and were duly promoted on 1st October, 1993. In the present writ petition, the petitioner has made a grievance that one such person, namely; Man Singh Tanwar, who was junior to him stands promoted vide orders dated 1st October, 1993.

Pursuant to the revocation of the suspension of the petitioner on 4.12.1995, he was ordered to proceed on training of Phone Mechanic at STTC, Sundernagar w.e.f. 11.3.1996. Inspite of successfull completion of his training for Phone Mechanic, he was not considered for promotion and his juniors were considered and pormoted w.e.f. 6th May, 1996. However, vide orders dated 17th April, 2001, he was promoted as Telecom Mechanic and vide subsequent orders dated 4.1.2002, it was directed that the pay of the petitioner be fixed in the cadre of Telecom Mechanic w.e.f. 6th May, 1996 notionally and monetary benefits be given w.e.f. 12th January, 2001 (that is the day of petitioner's acquittal in the Court). It is against this that the petitioner has filed the present writ petition.

Shri Bhuvnesh Sharma, learned counsel appearing for the petitioner contends that the petitioner ought to have been promoted w.e.f. 1st October, 1993, which is the date when juniors to him were promoted firstly. In the alternative, he submits that in any event in view of the ratio laid down in 1991 (4) SCC 109 ***Union of India and Others*** vs. ***K. V. Jankiraman and Others***, petitioner could not have been deprived of monetary benefits particularly when the respondents have fixed the pay notionally w.e.f. 6th May, 1996.

Per contra, Mr. Ashwani Pathak, learned counsel appearing for the respondents has contended that since a criminal case was pending investigation and trial, therefore, he cannot be granted monetary benefits. He further contends that since the petitioner did not actually work on the said post, thererore, monetary benefits cannot be given to him on the principle of '***Equal pay Equal work'***. He further contends that since the petitioner had not successfully completed his training in the year 1993, consequently, he could not have been considered for promotion prior to 1996.

I propose to deal with the contentions as under:-

I am in respectful agreement with Mr. Pathak that the petitioner cannot be promoted and awarded seniority w.e.f. 1st October, 1993, which is the date when the persons duly qualified and eligible were firstly considered and promoted. Admittedly, petitioner had not completed his course of training, which is one of eligibility criteria for promotion. The Rules as reproduced hereinabove make it abundantly clear. The petitioner was involved in criminal investigation and trial of a case of misappropriation of public property and money. It is not a case where the

petitioner was deliberately withheld from completing his training. Petitioner could have been considered for promotion only upon fulfilment of his eligibility criteria. In this view of the matter, the contention of the learned counsel for the respondents that he could have been promoted w.e.f. 1st October, 1993, is not acceptable and hereby rejected.

At this stage, Mr. Pathak, learned counsel appearing for the respondents sought time to supplement the arguments and the matter was adjourned for ***29.3.2007,*** when the matter was again heard and the orders is being dictated in the Court.

In ***Jankiraman's*** case, the Court was dealing with regard to the memorandum issued by the respondents wherein it was stipulated that no arrears of pay shall be payable to an employee for a period of notional promotion preceding the date of actual promotion. The argument that the employee should not be paid benefits on the principle of ***"No work No pay",*** was not accepted by the Court. It was held that the principle of ***"No work No pay",*** would not be applicable where the employee although willing to work is kept away from the work by the authorities for no fault of his. It was further held that when an employee is completely exonerated and is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of higher post along with other benefits from the date on which he would have normally been promoted but for the disciplinary / criminal proceedings. The Court also held as under:-

> "We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he has not found blameworthy in the least and is not visited with the penalty

> even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary / criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on acount of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concered authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary / criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. "

Now, coming to the facts in hand, it is evident that while undergoing training, the petitioner was under suspension from 1st November, 1993 to 4th December, 1995. During the trial of the criminal case, petitioner was again sent for his training to enable him to fulfil the eligibility criteria for promotion to the post of Telecom Mechanic. Having successfully completed his training in 1996 itself, petitioner's juniors were promoted on 6th May, 1996, when the petitioner's case was not even

considered. The authorities in their wisdom, in any event, have subsequently promoted him retrospectively w.e.f. 6.5.1996 itself. In the counter affidavit, no justifiable circumstance or reason to withhold the pecuniary benefits have been indicated except that the petitioner had not worked on the said post and, therefore, not entitled for any benefits. It is not the case of the respondents that the petitioner has delayed or protracted the criminal proceedings. The petitioner stands honourably acquitted by the Court in the criminal case. It is also not the case of the respondents that there was no post existing and that no promotion had taken place w.e.f. 1996. It is also not the case of the respondents that the petitioner was ineligible at the time of promotion. The fact that the petitioner has not worked and, therefore, is not entitled for pay alone cannot be a good ground disentitling his pecuniary benefits. This is so far the facts and reasons as mentioned hereinabove. Learned counsel for the petitioner has contended that a false case has been fastened upon the petitioner deliberately. If a person has been made to undergo agony and suffering and he comes out clean, I see no reason as to why all benefits must not be restored to him, which had been kept away unjustifiedly. In all fairness, Mr. Pathak, learned counsel for the respondents has brought to my notice the decision of the Supreme Court rendered in 1994 Supp.(3) SCC 674 ***Sulekh Chand and Salek Chand*** vs. ***Commissioner of Police and Others,*** wherein the apex Court has directed payment of all consequential benefits from the date of the employee's promotion.

In the facts and circumstances of the case, I see no reason as to why the writ petition be not allowed partly. Consequently, the respondents are directed to grant benefit of post of Telecom Mechanic to

the petitioner w.e.f. 6.5.1996 i.e. the date which has been notionally fixed by the respondents. The respondents are directed to pay the arrears within a period of three months from today, failing which the petitioner shall be entitled for interest thereupon @ 6%.

For all the foregoing reasons, the writ petition is partly allowed. No order as to costs.

(Sanjay Karol),
Judge.

March 28 / 29, 2007.
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